

AMENDED IN ASSEMBLY MARCH 10, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1923

Introduced by Assembly Member Anderson

February 12, 2008

~~An act to amend Section 1203 of the Penal Code, relating to probation.~~ *An act to amend Section 4575 of the Penal Code, relating to correctional facilities.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1923, as amended, Anderson. ~~Probation.~~ *Local correctional facilities: contraband.*

Existing law generally regulates the conditions of incarceration for prisoners in a local correctional facility, and specifically prohibits the unauthorized possession of a wireless communication device or the possession of tobacco products by inmates, as defined.

This bill would prohibit any unauthorized person from possessing a handcuff key, as defined, in a local correctional facility. A violation of that provision would be a misdemeanor. Because the bill would create a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing provisions of law specify the procedure for imposition of probation upon a criminal conviction, as specified.~~

~~This bill would make technical, nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 4575 of the Penal Code is amended to*
2 *read:*

3 4575. (a) Any person in a local correctional facility who
4 possesses a wireless communication device, including, but not
5 limited to, a cellular telephone, pager, or wireless Internet device,
6 who is not authorized to possess that item is guilty of a
7 misdemeanor, punishable by a fine of not more than one thousand
8 dollars (\$1,000).

9 (b) Any person housed in a local correctional facility who
10 possesses any tobacco products in any form, including snuff
11 products, smoking paraphernalia, any device that is intended to be
12 used for ingesting or consuming tobacco, or any container or
13 dispenser used for any of those products, is guilty of an infraction,
14 punishable by a fine not exceeding two hundred fifty dollars
15 (\$250).

16 (c) Money collected pursuant to this section shall be placed into
17 the inmate welfare fund, as specified in Section 4025.

18 (d) *Any person in a local correctional facility who possesses a*
19 *handcuff key who is not authorized to possess that item is guilty*
20 *of a misdemeanor, punishable by imprisonment in a county jail*
21 *not exceeding six months, or by a fine of up to one thousand dollars*
22 *(\$1,000), or by both that imprisonment and fine. As used in this*
23 *subdivision, "handcuff key" means any device designed or intended*
24 *to open or unlatch a handcuff.*

25 ~~(d)~~

26 (e) Subdivision (b) shall only apply to a person in a local
27 correctional facility in a county in which the board of supervisors
28 has adopted an ordinance or passed a resolution banning tobacco
29 in its correctional facilities.

30 *SEC. 2. No reimbursement is required by this act pursuant to*
31 *Section 6 of Article XIII B of the California Constitution because*
32 *the only costs that may be incurred by a local agency or school*
33 *district will be incurred because this act creates a new crime or*

1 *infraction, eliminates a crime or infraction, or changes the penalty*
2 *for a crime or infraction, within the meaning of Section 17556 of*
3 *the Government Code, or changes the definition of a crime within*
4 *the meaning of Section 6 of Article XIII B of the California*
5 *Constitution.*

6 ~~SECTION 1. Section 1203 of the Penal Code is amended to~~
7 ~~read:~~

8 ~~1203. (a) (1) As used in this code, "probation" means the~~
9 ~~suspension of the imposition or execution of a sentence and the~~
10 ~~order of conditional and revocable release in the community under~~
11 ~~the supervision of a probation officer.~~

12 ~~(2) As used in this code, "conditional sentence" means the~~
13 ~~suspension of the imposition or execution of a sentence and the~~
14 ~~order of revocable release in the community subject to conditions~~
15 ~~established by the court without the supervision of a probation~~
16 ~~officer.~~

17 ~~(3) It is the intent of the Legislature that both conditional~~
18 ~~sentence and probation are authorized whenever probation is~~
19 ~~authorized in any code as a sentencing option for infractions or~~
20 ~~misdemeanors.~~

21 ~~(b) (1) Except as provided in subdivision (j), if a person is~~
22 ~~convicted of a felony and is eligible for probation, before judgment~~
23 ~~is pronounced, the court shall immediately refer the matter to a~~
24 ~~probation officer to investigate and report to the court, at a specified~~
25 ~~time, upon the circumstances surrounding the crime and the prior~~
26 ~~history and record of the person, which may be considered either~~
27 ~~in aggravation or mitigation of the punishment.~~

28 ~~(2) (A) The probation officer shall immediately investigate and~~
29 ~~make a written report to the court of his or her findings and~~
30 ~~recommendations, including his or her recommendations as to the~~
31 ~~granting or denying of probation and the conditions of probation,~~
32 ~~if granted.~~

33 ~~(B) Pursuant to Section 828 of the Welfare and Institutions~~
34 ~~Code, the probation officer shall include in his or her report any~~
35 ~~information gathered by a law enforcement agency relating to the~~
36 ~~taking of the defendant into custody as a minor, which shall be~~
37 ~~considered for purposes of determining whether adjudications of~~
38 ~~commissions of crimes as a juvenile warrant a finding that there~~
39 ~~are circumstances in aggravation pursuant to Section 1170 or to~~
40 ~~deny probation.~~

1 ~~(C) If the person was convicted of an offense that requires him~~
2 ~~or her to register as a sex offender pursuant to Section 290, the~~
3 ~~probation officer's report shall include the results of the~~
4 ~~State-Authorized Risk Assessment Tool for Sex Offenders~~
5 ~~(SARATSO) administered pursuant to Sections 290.04 to 290.06,~~
6 ~~inclusive, if applicable.~~

7 ~~(D) The probation officer shall also include in the report his or~~
8 ~~her recommendation of both of the following:~~

9 ~~(i) The amount the defendant should be required to pay as a~~
10 ~~restitution fine pursuant to subdivision (b) of Section 1202.4.~~

11 ~~(ii) Whether the court shall require, as a condition of probation,~~
12 ~~restitution to the victim or to the Restitution Fund and the amount~~
13 ~~thereof.~~

14 ~~(E) The report shall be made available to the court and the~~
15 ~~prosecuting and defense attorneys at least five days, or upon request~~
16 ~~of the defendant or prosecuting attorney nine days, prior to the~~
17 ~~time fixed by the court for the hearing and determination of the~~
18 ~~report, and shall be filed with the clerk of the court as a record in~~
19 ~~the case at the time of the hearing. The time within which the report~~
20 ~~shall be made available and filed may be waived by written~~
21 ~~stipulation of the prosecuting and defense attorneys that is filed~~
22 ~~with the court or an oral stipulation in open court that is made and~~
23 ~~entered upon the minutes of the court.~~

24 ~~(3) At a time fixed by the court, the court shall hear and~~
25 ~~determine the application, if one has been made, or, in any case,~~
26 ~~the suitability of probation in the particular case. At the hearing,~~
27 ~~the court shall consider any report of the probation officer,~~
28 ~~including the results of the SARATSO, if applicable, and shall~~
29 ~~make a statement that it has considered the report, which shall be~~
30 ~~filed with the clerk of the court as a record in the case. If the court~~
31 ~~determines that there are circumstances in mitigation of the~~
32 ~~punishment prescribed by law or that the ends of justice would be~~
33 ~~served by granting probation to the person, it may place the person~~
34 ~~on probation. If probation is denied, the clerk of the court shall~~
35 ~~immediately send a copy of the report to the Department of~~
36 ~~Corrections and Rehabilitation at the prison or other institution to~~
37 ~~which the person is delivered.~~

38 ~~(4) The preparation of the report or the consideration of the~~
39 ~~report by the court may be waived only by a written stipulation of~~
40 ~~the prosecuting and defense attorneys that is filed with the court~~

1 or an oral stipulation in open court that is made and entered upon
2 the minutes of the court, except that there shall be no waiver unless
3 the court consents thereto. However, if the defendant is ultimately
4 sentenced and committed to the state prison, a probation report
5 shall be completed pursuant to Section 1203c.

6 ~~(e) If a defendant is not represented by an attorney, the court~~
7 ~~shall order the probation officer who makes the probation report~~
8 ~~to discuss its contents with the defendant.~~

9 ~~(d) If a person is convicted of a misdemeanor, the court may~~
10 ~~either refer the matter to the probation officer for an investigation~~
11 ~~and a report or summarily pronounce a conditional sentence. If~~
12 ~~the person was convicted of an offense that requires him or her to~~
13 ~~register as a sex offender pursuant to Section 290, the court shall~~
14 ~~refer the matter to the probation officer for the purpose of obtaining~~
15 ~~a report on the results of the State-Authorized Risk Assessment~~
16 ~~Tool for Sex Offenders administered pursuant to Sections 290.04~~
17 ~~to 290.06, inclusive, if applicable, which the court shall consider.~~
18 ~~If the case is not referred to the probation officer, in sentencing~~
19 ~~the person, the court may consider any information concerning the~~
20 ~~person that could have been included in a probation report. The~~
21 ~~court shall inform the person of the information to be considered~~
22 ~~and permit him or her to answer or controvert the information. For~~
23 ~~this purpose, upon the request of the person, the court shall grant~~
24 ~~a continuance before the judgment is pronounced.~~

25 ~~(e) Except in unusual cases where the interests of justice would~~
26 ~~best be served if the person is granted probation, probation shall~~
27 ~~not be granted to any of the following persons:~~

28 ~~(1) Unless the person had a lawful right to carry a deadly~~
29 ~~weapon, other than a firearm, at the time of the perpetration of the~~
30 ~~crime or his or her arrest, any person who has been convicted of~~
31 ~~arson, robbery, carjacking, burglary, burglary with explosives,~~
32 ~~rape with force or violence, torture, aggravated mayhem, murder,~~
33 ~~attempt to commit murder, trainwrecking, kidnapping, escape from~~
34 ~~the state prison, or a conspiracy to commit one or more of those~~
35 ~~crimes and who was armed with the weapon at either of those~~
36 ~~times.~~

37 ~~(2) Any person who used, or attempted to use, a deadly weapon~~
38 ~~upon a human being in connection with the perpetration of the~~
39 ~~crime of which he or she has been convicted.~~

1 ~~(3) Any person who willfully inflicted great bodily injury or~~
2 ~~torture in the perpetration of the crime of which he or she has been~~
3 ~~convicted.~~

4 ~~(4) Any person who has been previously convicted twice in this~~
5 ~~state of a felony or in any other place of a public offense which,~~
6 ~~if committed in this state, would have been punishable as a felony.~~

7 ~~(5) Unless the person has never been previously convicted once~~
8 ~~in this state of a felony or in any other place of a public offense~~
9 ~~which, if committed in this state, would have been punishable as~~
10 ~~a felony, any person who has been convicted of burglary with~~
11 ~~explosives, rape with force or violence, torture, aggravated~~
12 ~~mayhem, murder, attempt to commit murder, trainwrecking,~~
13 ~~extortion, kidnapping, escape from the state prison, a violation of~~
14 ~~Section 286, 288, 288a, or 288.5, or a conspiracy to commit one~~
15 ~~or more of those crimes.~~

16 ~~(6) Any person who has been previously convicted once in this~~
17 ~~state of a felony or in any other place of a public offense which,~~
18 ~~if committed in this state, would have been punishable as a felony,~~
19 ~~if he or she committed any of the following acts:~~

20 ~~(A) Unless the person had a lawful right to carry a deadly~~
21 ~~weapon at the time of the perpetration of the previous crime or his~~
22 ~~or her arrest for the previous crime, he or she was armed with a~~
23 ~~weapon at either of those times.~~

24 ~~(B) The person used, or attempted to use, a deadly weapon upon~~
25 ~~a human being in connection with the perpetration of the previous~~
26 ~~crime.~~

27 ~~(C) The person willfully inflicted great bodily injury or torture~~
28 ~~in the perpetration of the previous crime.~~

29 ~~(7) Any public official or peace officer of this state or any city,~~
30 ~~county, or other political subdivision who, in the discharge of the~~
31 ~~duties of his or her public office or employment, accepted or gave~~
32 ~~or offered to accept or give any bribe, embezzled public money,~~
33 ~~or was guilty of extortion.~~

34 ~~(8) Any person who knowingly furnishes or gives away~~
35 ~~phenylelidine.~~

36 ~~(9) Any person who intentionally inflicted great bodily injury~~
37 ~~in the commission of arson under subdivision (a) of Section 451~~
38 ~~or who intentionally set fire to, burned, or caused the burning of,~~
39 ~~an inhabited structure or inhabited property in violation of~~
40 ~~subdivision (b) of Section 451.~~

1 ~~(10) Any person who, in the commission of a felony, inflicts~~
2 ~~great bodily injury or causes the death of a human being by the~~
3 ~~discharge of a firearm from or at an occupied motor vehicle~~
4 ~~proceeding on a public street or highway.~~

5 ~~(11) Any person who possesses a short-barreled rifle or a~~
6 ~~short-barreled shotgun under Section 12020, a machinegun under~~
7 ~~Section 12220, or a silencer under Section 12520.~~

8 ~~(12) Any person who is convicted of violating Section 8101 of~~
9 ~~the Welfare and Institutions Code.~~

10 ~~(13) Any person who is described in paragraph (2) or (3) of~~
11 ~~subdivision (g) of Section 12072.~~

12 ~~(f) When probation is granted in a case which comes within~~
13 ~~subdivision (e), the court shall specify on the record and shall enter~~
14 ~~on the minutes the circumstances indicating that the interests of~~
15 ~~justice would best be served by that disposition.~~

16 ~~(g) If a person is not eligible for probation, the judge shall refer~~
17 ~~the matter to the probation officer for an investigation of the facts~~
18 ~~relevant to determination of the amount of a restitution fine~~
19 ~~pursuant to subdivision (b) of Section 1202.4 in all cases where~~
20 ~~the determination is applicable. The judge, in his or her discretion,~~
21 ~~may direct the probation officer to investigate all facts relevant to~~
22 ~~the sentencing of the person. Upon that referral, the probation~~
23 ~~officer shall immediately investigate the circumstances surrounding~~
24 ~~the crime and the prior record and history of the person and make~~
25 ~~a written report to the court of his or her findings. The findings~~
26 ~~shall include a recommendation of the amount of the restitution~~
27 ~~fine as provided in subdivision (b) of Section 1202.4.~~

28 ~~(h) If a defendant is convicted of a felony and a probation report~~
29 ~~is prepared pursuant to subdivision (b) or (g), the probation officer~~
30 ~~may obtain and include in the report a statement of the comments~~
31 ~~of the victim concerning the offense. The court may direct the~~
32 ~~probation officer not to obtain a statement if the victim has in fact~~
33 ~~testified at any of the court proceedings concerning the offense.~~

34 ~~(i) No probationer shall be released to enter another state unless~~
35 ~~his or her case has been referred to the Administrator of the~~
36 ~~Interstate Probation and Parole Compacts, pursuant to the Uniform~~
37 ~~Act for Out-of-State Probationer or Parolee Supervision (Article~~
38 ~~3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part~~
39 ~~4) and the probationer has reimbursed the county that has~~
40 ~~jurisdiction over his or her probation case the reasonable costs of~~

1 processing his or her request for interstate compact supervision.
2 The amount and method of reimbursement shall be in accordance
3 with Section 1203.1b.

4 (j) In any court where a county financial evaluation officer is
5 available, in addition to referring the matter to the probation officer,
6 the court may order the defendant to appear before the county
7 financial evaluation officer for a financial evaluation of the
8 defendant's ability to pay restitution, in which case the county
9 financial evaluation officer shall report his or her findings regarding
10 restitution and other court-related costs to the probation officer on
11 the question of the defendant's ability to pay those costs.

12 Any order made pursuant to this subdivision may be enforced
13 as a violation of the terms and conditions of probation upon willful
14 failure to pay and at the discretion of the court, may be enforced
15 in the same manner as a judgment in a civil action, if any balance
16 remains unpaid at the end of the defendant's probationary period.

17 (k) Probation shall not be granted to, nor shall the execution of,
18 or imposition of sentence be suspended for, any person who is
19 convicted of a violent felony, as defined in subdivision (e) of
20 Section 667.5, or a serious felony, as defined in subdivision (e) of
21 Section 1192.7, and who was on probation for a felony offense at
22 the time of the commission of the new felony offense.